

Remarks

The Examiner has indicated applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. Applicant elects to proceed with Species I, claims 1-3, 5-17, and 19-40 according to Figs. 1-12 if no generic claim is finally held allowable. Claims 4 and 18 are withdrawn.

The Examiner objected to the disclosure in specification for three informalities in paragraphs 4, 13 and 48. Applicant has amended the specification in accordance with the Examiner's recommendations.

The Examiner has objected to the drawings under 37 CFR 1.83(a) for not showing every feature of the invention in the specified claims. Applicant has submitted corrected drawing sheets for FIGS. 1 and 2 and amended to the specification to overcome the objection. No new matter has been entered.

The Examiner has also objected to claim 10 and 19 for informalities. Applicant has amended those claims to correct those informalities.

The Examiner has rejected claims 27-29, 31 and 32 under 35 U.S.C. 102(b) as being anticipated by U.S. patent 1,547,014 to Bantel. However, Applicant respectfully requests the Examiner take notice that Bantel does not anticipate Applicant's invention because it does not disclose a tensioner that biases the dispensing container in a downward direction and against the back member as required by the claim 27. When discussing Bantel the Examiner identifies that the adjustable tensioner by reference numbers 17 and 19 which are a sliding plate 17, and a contractile spring 19. However, Bantel discloses a tensioner that acts to bias a container in a upward, not downward direction as claimed. As Bantel discloses, the lower end of the spring 19 is attached to the sliding plate 17 and thus the plate 17 is normally drawn upward by the spring 19.

Col 2 lines 74-79. "When, however, the milk bottle is forced between the spring jaws 18 and let go, the weight of the milk bottle will pull open on the jaws and this will pull down on the plate 17 against the action of the spring 19 . . . " Col 2 lines 79-84. The action of the spring 19 is upwards against the downward weight of the bottle. Thus, it is clear that the spring tensioner in Bantel does not bias the milk container in a downward direction and against the back member as claimed but instead biases the container in an upward direction. Because Bantel is missing this limitation it cannot anticipate Applicants' invention or claims 27-29, 31 or 32.

The Examiner has also rejected claims 1-3, 5-17, 19, 21-26, 30, and 33-40 under 35 U.S.C. 103(a) as being unpatentable over Bantel in view of U.S. Patent 3,177,048 to Whatley. Applicant respectfully disagrees with the Examiner's conclusion because the cited references do not disclose each of the elements in the claims and because there is no suggestion to combine the cited references. Even if the cited references were to be combined it would not result in the claimed invention.

As amended all the independent claims 1, 10, 16, 21, 27, 33, and 35 require the retaining member to bias the container being retained in a direction downward and towards the back member. None of the cited references disclose such a device. As discussed previously in the remarks, Bantel discloses a device which biases the product in an upward, not downward direction and it fails to disclose a device with protruberances. Whatley, which was also cited by the Examiner does not disclose any type of retaining member to hold a product container. It merely describes a soap dish upon which soap can rest. It does not show biasing a product in any direction. Neither of these references discloses or suggests a device where the product being held is being biased in a downward direction by a tensioner.

Further, there is no suggestion anywhere in either reference to combine the two references. Bantel discloses a device to hold bottles as delivered by the milkman in an

upright position to prevent the bottle from tipping over (Col. 1 lines 10-16), while Whatley discloses a soap holder designed to minimize the area of the soap that contacts the holder (Col. 1 line 9-15). There can be found in these references no suggestion to those of ordinary skill in the art that they should combine these devices from very different fields to solve the problem overcome by Applicants' invention. In fact, the references themselves teach away from combining the two. The goal of Whatley is to minimize contact between the soap and the holder while the goal of Bantel is to secure the bottle by gripping it and putting the bottle under tension while holding it in place with spring jaws 18. Holding soap with such spring jaws would increase the contact between the holder and the soap thus going against the goal of the Whatley invention. Alternatively, minimizing the contact between a milk bottle and a holder as disclosed in Whatley would result in a bottle holder that does little to keep the milk bottle upright increasing the possibility of spillage, thus defeating the goal of Bantel.

Based on the arguments and amendments made by Applicants, Applicants believe the remaining claims are in condition for allowance and respectfully request their allowance by the Examiner.

Respectfully submitted,

Handwritten signature of Richard J. Basile in cursive, followed by the date 2/17/05.

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